

Application No. 10/630,025
Filed July 30, 2003
Amendment A

Attorney Docket No. 7319/88336 (EI-7583)

AMENDMENTS TO THE DRAWINGS

A set of replacement sheets is hereby provided for Figures 1-3. It is respectfully requested that the enclosed Formal Drawings (Figures 1-3) be substituted for those currently on file.

Attachments: Replacement Sheets of Drawings

REMARKS

In the Office Action mailed December 7, 2007, Claims 1-45 were rejected under 35 U.S.C. § 102(b) as being anticipated by "Vektron 6913 NO_x Reduction Strategy Implementation Options." Further, claims 1-45 were provisional rejected on the ground of non-statutory obvious-type double patenting as being unpatentable over claims 1-50 of copending Application No. 10/417,465. The Examiner also provided notice that Claims 1, 40, and 41 would be objected to as being substantial duplicates of one another. The Examiner objected to the drawings and noted that corrected drawings in compliance with 37 C.F.R. 1.121(d) are required. The Applicants hereby traverse the rejections and request reconsideration.

As a preliminary matter, the Applicants would like to thank the Examiner for the courtesies he extended during our telephone call on February 25, 2008 during which the Vektron publication date and lack thereof was discussed.

I. Objections to the drawings

The Examiner has objected to the drawings as filed and is requiring new drawings in compliance with 37 C.F.R. 1.121(d) because the originally filed drawings were informal. Thus, the Applicants hereby submit Replacement Sheets of Formal Drawings and request that these drawings be substituted for those currently on file.

The Applicants submit that this substitution overcomes the objection to the informal drawings and respectfully request reconsideration and examination.

II. Rejections under 35 U.S.C. §102

Claims 1-45 were rejected under 35 U.S.C. §102(b) as being anticipated by "Vektron 6913 NO_x Reduction Strategy Implementation Options," which was submitted by the Applicants with a May 3, 2004 Information Disclosure Statement. The Applicants respectfully note that the Examiner has not made a *prima facie* showing of anticipation at least because the cited reference does not have a date of publication. In addition, the Applicants strongly believe that there are major differences between the Vektron reference and the claims in the presently

pending application. While the Applicants did submit the reference in an Information Disclosure Statement, the Applicants are not aware of a date of publication but submitted the reference in an abundance of caution. Accordingly, if the Examiner can ascertain a date, the Applicants will consider the reference at that time.

III. Provisional Non-Statutory Double Patenting Rejection

The Examiner has given a provisional rejection of Claims 1-45 on the grounds of non-statutory obviousness-type double patenting. As the claims may change during the course of prosecution and thus may not be subject to a non-statutory obvious-type double patenting rejection, the Applicants will file a terminal disclaimer if and when deemed appropriate and when the claims are deemed to otherwise be allowable.

IV. Double Patenting Objection of Duplicate Claims

The Examiner has given a preliminary objection to Claims 1, 40, and 41 as being substantial duplicates of one another. The Applicants respectfully traverse this provisional objection. “Court decisions have confirmed applicant’s right to restate (i.e., by plural claiming) the invention in a reasonable number of ways. Indeed, a mere difference in scope between claims has been held to be enough.” MPEP 706.03(k). While MPEP 706.03(k) may be used to object to claims in an application that are duplicates or are so close in content that they cover both the same thing, despite a slight difference in wording, that is not the case here.

As stated, the Applicants have a right to restate their claimed invention as long as the claims have a slight difference in scope. Further, since someone who infringes Claim 40 may not necessarily infringe Claim 1, the varying scope presented by these claims is allowable.

Thus, the Applicants contend that the claims have differing claim scope and request that the provisional duplicate claim objection be reconsidered.

V. Conclusions

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We believe that each of the Examiner's concerns have been addressed herein and respectfully request favorable consideration. In addition, the Applicants have amended claim 39 to address a minor typographical error in the claim with the spacing between the term "claim" and the reference "37." The Applicants respectfully request entry of this amendment.

The Commissioner is hereby authorized to charge any additional fees which may be required with respect to this communication, or credit any overpayment, to Deposit Account No. 06-1135.

Respectfully submitted,
FITCH, EVEN, TABIN & FLANNERY

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